

1 UNITED STATES DISTRICT COURT
2 DISTRICT OF NEVADA

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4 ANTHONY BURRIOLA,

5 Plaintiff,

6 v.

7 STATE OF NEVADA, *et al.*,

8 Defendants.
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Case No. 2:19-cv-01936-RFB-NJK

ORDER

10 This action began with a *pro se* civil rights complaint filed pursuant to 42 U.S.C. §
11 1983 by a state prisoner. On November 5, 2019, this Court issued an order directing
12 Plaintiff to file a fully complete application to proceed *in forma pauperis* or pay the full
13 filing fee of \$400.00 within thirty (30) days from the date of that order. (ECF No. 3 at 2).
14 The thirty-day period has now expired, and Plaintiff has not filed an application to proceed
15 *in forma pauperis*, paid the full filing fee, or otherwise responded to the Court's order.

16 District courts have the inherent power to control their dockets and “[i]n the
17 exercise of that power, they may impose sanctions including, where appropriate . . .
18 dismissal” of a case. Thompson v. Hous. Auth. of City of Los Angeles, 782 F.2d 829, 831
19 (9th Cir. 1986). A court may dismiss an action, with prejudice, based on a party's failure
20 to prosecute an action, failure to obey a court order, or failure to comply with local rules.
21 See Ghazali v. Moran, 46 F.3d 52, 53-54 (9th Cir. 1995) (affirming dismissal for
22 noncompliance with local rule); Ferdik v. Bonzelet, 963 F.2d 1258, 1260-61 (9th Cir.
23 1992) (affirming dismissal for failure to comply with an order requiring amendment of
24 complaint); Carey v. King, 856 F.2d 1439, 1440-41 (9th Cir. 1988) (affirming dismissal
25 for failure to comply with local rule requiring *pro se* plaintiffs to keep court apprised of
26 address); Malone v. U.S. Postal Service, 833 F.2d 128, 130 (9th Cir. 1987) (affirming
27 dismissal for failure to comply with court order); Henderson v. Duncan, 779 F.2d 1421,
28 1424 (9th Cir. 1986) (affirming dismissal for lack of prosecution and failure to comply with

1 local rules).

2 In determining whether to dismiss an action for lack of prosecution, failure to obey
3 a court order, or failure to comply with local rules, the court must consider several factors:
4 (1) the public's interest in expeditious resolution of litigation; (2) the court's need to
5 manage its docket; (3) the risk of prejudice to the defendants; (4) the public policy favoring
6 disposition of cases on their merits; and (5) the availability of less drastic alternatives.
7 See Thompson, 782 F.2d at 831; Henderson, 779 F.2d at 1423-24; Malone, 833 F.2d at
8 130; Ferdik, 963 F.2d at 1260-61; Ghazali, 46 F.3d at 53.

9 Here, the Court finds that the first two factors, the public's interest in expeditiously
10 resolving this litigation and the Court's interest in managing the docket, weigh in favor of
11 dismissal. The third factor, risk of prejudice to Defendants, also weighs in favor of
12 dismissal, since a presumption of injury arises from the occurrence of unreasonable delay
13 in filing a pleading ordered by the court or prosecuting an action. See Anderson v. Air
14 West, 542 F.2d 522, 524 (9th Cir. 1976). The fourth factor—public policy favoring
15 disposition of cases on their merits—is greatly outweighed by the factors in favor of
16 dismissal discussed herein. Finally, a court's warning to a party that his failure to obey
17 the court's order will result in dismissal satisfies the "consideration of alternatives"
18 requirement. Ferdik, 963 F.2d at 1262; Malone, 833 F.2d at 132-33; Henderson, 779
19 F.2d at 1424. The Court's order requiring Plaintiff to file an application to proceed *in forma*
20 *pauperis* or pay the full filing fee within thirty (30) days expressly stated: "IT IS FURTHER
21 ORDERED that if Plaintiff does not timely comply with this order, dismissal of this action
22 may result." (ECF No. 3 at 2). Thus, Plaintiff had adequate warning that dismissal would
23 result from his noncompliance with the Court's order to file an application to proceed *in*
24 *forma pauperis* or pay the full filing fee within thirty (30) days.

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1 Therefore, IT IS ORDERED that this action is dismissed without prejudice based
2 on Plaintiff's failure to file an application to proceed *in forma pauperis* or pay the full filing
3 fee in compliance with this Court's November 5, 2019, order.

4 IT IS FURTHER ORDERED that the Clerk of Court shall enter judgment
5 accordingly.

6 DATED: December 12, 2019.

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10 RICHARD E. BOULWARE, II
11 UNITED STATES DISTRICT JUDGE
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